

June 7, 2006

Re: Proposed WIPO Broadcast Treaty

Dear Member:

The undersigned companies and trade associations are gravely troubled by the World Intellectual Property Organization's proposed "Treaty on the Protection of Broadcasting Organizations. (WIPO Broadcast Treaty)." This little known proposed treaty is being advocated by the Library of Congress Copyright Office and U.S. Patent and Trademark Office without adequate public vetting or support.

As discussed below, the treaty as written creates new liability risks for telecommunications intermediaries as well as software developers and device manufacturers. The rights granted under the treaty would allow incumbent broadcasters and cablecasters to withhold access to valuable programming and inhibit the legitimate enjoyment of content by consumers in their homes and through digital consumer devices. We understand public interest organizations have communicated to you their concerns about this proposed treaty. We agree with many of those concerns and advise you that, as industry, we too object to this proposed treaty.

Broadcasters, cablecasters and webcasters (referred to collectively for the purposes of this letter as "broadcasters") have asked WIPO to grant them a new set of intellectual property rights in their signals with a 50-year term. These rights would be layered on top of already existing copyrights in the program material. The sole justification advanced for this unprecedented request is to prevent signal theft: an over-the-air broadcast spokesman was quoted in Congressional Daily saying that a new treaty is needed to protect sports programming on television because without it international soccer matches can be picked up via satellite and rebroadcast in foreign countries without compensating the broadcaster's investment. This is signal theft and does not require the creation of entirely new intellectual property rights.¹

The broad nature of the rights contained in this treaty has the potential to inflict great harm upon important business and consumer interests. Telecommunications intermediaries, such as internet service providers, would likely face potential liability for violation of its provisions. This treaty also would threaten intermediaries and device makers with secondary liability for infringement of these new rights by consumers. These unquantifiable risks will inhibit innovation and market development.

In addition, several articles of the proposed treaty would substantially and adversely affect consumer rights. For example, broadcasters could retain rights to restrict home networking and other longstanding noncommercial consumer practices. Broadcasters could also require service providers to monitor for circumvention of technical measures used to prevent acts "not authorized by the broadcasting organizations." Finally, broadcasters use their new rights to force makers of digital video recorders to obtain authorization and agree to limits on their technology simply to enable "time shifting" of broadcast content.

Incumbent cable companies could use the rights afforded under the treaty to withhold access to sports or other key programming from competitive carriers, such as those providing Fiber to the Premises or IPTV, unless such carriers agreed to use proprietary and burdensome "technological protection measures" in set top boxes and other equipment.

¹ Indeed, the TRIPS treaty already gives broadcasters the right to prevent such rebroadcast. Moreover, in the U.S., the Copyright Act and Section 325 of the Communications Act and numerous state theft of services laws already afford complete protection against signal theft. Nevertheless, if broadcasters can demonstrate another signal theft treaty is needed, we would support such a limited treaty. The proposed treaty, however, goes far beyond signal theft; no one has advanced a single justification for such overreaching.

Not least, the grant of broad new IP rights to broadcasters would place yet another obstacle before content marketers, who already face substantial difficulties in getting creative product in the hands of consumers *legally* and at reasonable cost under the existing, fragmented system of clearance procedures.

These are just a few of the difficulties that could result from implementation of this draft treaty. There are others, affecting public domain material, orphan works, and compilations – none of which are subject to current copyright restraints under U.S. law.

For these reasons, the undersigned oppose the treaty as currently drafted. We urge Congress to hold hearings on this issue as soon as possible. The Copyright Office and USPTO should be asked to explain the need for this treaty and these unprecedented new intellectual property rights, and any proponents should explain why existing treaties and laws are inadequate to prevent the rebroadcast of their signals. Such a hearing would also provide the broad cross sector of business and the public interest groups the opportunity to further explain the harms that could result from the draft treaty.

We are prepared to meet with you to discuss this matter further. If you wish us to meet with you and/or your staff, please contact: Michael Petricone at (703) 907-7544; Sarah Deutsch at (703) 351-3044 or Jim Burger at (202) 776-2300. Thank you for your attention to this matter.

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BellSouth Corp.
Broadband Service Providers Association
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United States Telecom Association